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PART XV.

STATUS OF AMERICAN CONSULAR OFFICERS IN BELLIG-  
ENT TERRITORY OCCUPIED BY ENEMY TROOPS.

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*Ambassador Gerard to the Secretary of State.*

No. 308.]

AMERICAN EMBASSY,  
*Berlin, December 4, 1914.*

SIR: I have the honor to transmit to you herewith a copy in translation of a Note Verbale, received from the Imperial German Foreign Office, stating the position of the German Government, respecting the recognition of Consular Officers in territory under occupation by the German Army.

I have, etc.

JAMES W. GERARD.

[Inclosure—Translation.]

Nr. I c 16180  
96680

FOREIGN OFFICE,  
*Berlin, November 30, 1914.*

NOTE VERBALE.

Now that the German Army has occupied various portions of enemy countries, the German Government considers the Exequaturs of the Consuls, formerly permitted to act in such districts, to have expired.

The Imperial Government would, however, be disposed to consider favorably any wishes of allied and neutral countries, respecting the establishment of consular offices in the districts in question, excepting, of course, those districts where military operations are still in course.

In Belgium consular activities in the provinces of East and West Flanders would accordingly not be permitted at present. With regard to the other parts of Belgium, consular officers would be permitted to act for the present in Brussels, Antwerp, and Liege, but not at other points.

The Imperial Government would not consider the issuance of formal Exequatur advisable; to consular officers, whose names are communicated to the Foreign Office, would simply be granted temporary recognition to enable them to act in their official capacity, under reserve of the usual investigations respecting their records.

In view of the peculiar circumstances contingent on military occupation, the Imperial Government would be grateful if only such persons should be nominated as are assuredly friendly to Germany or have at least neutral convictions.

In bringing the above to the attention of the Embassy, the Foreign Office has the honor respectfully to request that the American Government may be notified in the above sense. As the Embassy is aware, the German Government has already recognized Consul-General Diederich at Antwerp, assuming this to be the wish of the American Government.

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*The Belgian Minister to the Secretary of State.*

[Translation.]

BELGIAN LEGATION,  
*Washington, December 28, 1914.*

MR. SECRETARY OF STATE: I have just received the following cablegram from my Government:

The German Government has just notified the neutral powers of its intention to cancel the exequaturs granted by the Belgian Government to foreign consuls and to create but those consular posts at Brussels, Liege, and Antwerp, temporary recognition only being granted to those officers.

The Belgian Government has entered protest at Berlin, under Article 42 of the 4th Convention of The Hague, military occupation only confers upon the occupant State over the territory of the occupied State *de facto* possession, the right to cancel all exequaturs can not be derived from that title.

I have been officially instructed to notify Your Excellency of the Belgian Government's protest.

Be pleased to accept, etc.,

E. HAVENITH.

*Ambassador Gerard to the Secretary of State.*

No. 425.]

AMERICAN EMBASSY,  
*Berlin, January 11, 1915.*

SIR: With reference to my despatch No. 308 of December 4, 1914, I have the honor to transmit to you herewith a copy and translation of a Note Verbale, received from the Imperial German Foreign Office, dated January 3, 1915, and of a Note Verbale<sup>1</sup> addressed to the Imperial Foreign Office by the Royal Spanish Embassy at Berlin, relative to the protest of the Belgian Government against the position taken by the German Government, respecting the recognition of consular officers in territory under occupation by the German Army.

I have, etc.,

JAMES W. GERARD.

[Inclosure—Translation.]

II  

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2312FOREIGN OFFICE,  
*Berlin, January 3, 1915.*

## NOTE VERBALE.

In supplement to its Note Verbale of November 30, 1914, No. Ic 16180, the Foreign Office has the honor to enclose herewith to the Embassy of the United States of America a copy of a Note Verbale, received from the Royal Spanish Embassy, which transmitted to the Imperial German Government a protest of the Belgian Government relative to the position of neutral consuls in Belgium:

The Imperial Government is obliged to consider that the protest of the Belgian Government is not well founded.

Article 42 of the IVth Hague Convention in particular is not capable of supporting the view of the Belgian Government. This article makes it obligatory on the occupant State only to maintain as far as possible public order in the occupied districts, but not to permit the officials of the enemy State to remain in office. Such officials cannot be tolerated, except as far as military considerations admit, and if the officials themselves are ready to comply with the regulations of the occupant State. If these principles are applied by analogy to the Consuls of neutral

<sup>1</sup> Not printed; substance stated in preceding document.

States, it results that they also cannot perform their public duties, except by consent of the occupant Power and to the extent allowed by it, inasmuch as the exequatur of the enemy is not binding on the occupant Power.

The Note Verbale of the Imperial Foreign Office of November 30, last, does not affect the rights of the Belgian Government in any way, but deals exclusively with the interests of the Imperial Government, which conceives it to be its right and its unalterable duty to regulate for the period of occupation the consular protection in the territory occupied by its Army. Moreover, this reregulation is primarily necessary in the interests of neutral nationals themselves. More than 300 consular representatives of the allied and neutral States were hitherto officially recognized in Belgium. By far the majority of them were honorary consuls of Belgian nationality, and of them a large number have left Belgium. It is beyond doubt that the Imperial Government, in the very interest of neutral nationals, can not hesitate to see to it that their consular protection is established securely and effectively, to which end it has, as a first step, requested the allied and neutral Governments, under date of November 30, 1914, to express their wishes.

The Foreign Office begs to request the good offices of the Embassy of the United States of America to the end that the above may be brought to the attention of its Government.

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*The Secretary of State to Ambassador Gerard.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, January 21, 1915.*

Note verbale enclosed in your dispatch 308. You are instructed to present the following to the German Government:

The Government of the United States has received and given consideration to the Note Verbale of the Imperial Government dated November 30, 1914, in which it is stated that the German Army now having occupied various portions of enemy countries, the German Government

considers the Exequaturs of the Consuls, formerly permitted to act in such districts, to have expired. That the Imperial Government would, however, be disposed to consider favorably any wishes of allied and neutral countries respecting the establishment of consular offices in the districts in question, excepting, of course, those districts where military operations are still in course; and that the Imperial Government would not consider the issuance of formal Exequaturs advisable; to consular officers, whose names are communicated to the Foreign Office, would simply be granted temporary recognition to enable them to act in their official capacity, under reserve of the usual investigations respecting their records.

The Government of the United States, in view of the fact that consular offices are commercial and not political representatives of a government and that permission for them to act within defined districts is dependent upon the authority which is in actual control of such districts irrespective of the question of legal right, and further, in view of the fact that the consular districts, to which reference is made in the Note Verbale of the Imperial Government, are within the territory now under German military occupation, is not inclined at this time to question the right of the Imperial Government to suspend the exequaturs of the consular officers of the United States within the districts which are occupied by the military forces of the German Empire and subject to its military jurisdiction.

The Government of the United States notes that all the consular districts in Belgian territory occupied by the German military forces, excepting Brussels, Antwerp, and Liège, are considered by the Imperial Government to be within the zone of military operations and that within such districts, except those named, the Imperial Government will not permit consular officers to exercise their functions.

The Government of the United States in the circumstances assumes that the Imperial Government will raise no objection to the consular officers of the United States now stationed at Brussels, Antwerp, Liège, and other places similarly situated acting in their official capacity, and that, if the *de facto* authorities at those cities object on personal grounds to any of such officers continuing, the Government of the United States will be forthwith notified of such objection.

BRYAN.

*The Secretary of State to the Belgian Minister.*

DEPARTMENT OF STATE,  
*Washington, January 25, 1915.*

SIR: I have received your note, No. 3465, of December 28, 1914, in which you refer to the notification of the neutral powers by the German Government of its intention to cancel the exequaturs granted by your Government to foreign consuls and to create but three consular posts, namely, Brussels, Liège, and Antwerp, only granting temporary recognition to the consular officers stationed at those places.

You state that your Government has entered a protest at Berlin under Article 42 of the Fourth Convention of The Hague, to the effect that military occupation only confers upon the occupant *de facto* possession, which does not carry with it the right to cancel exequaturs.

Accept, etc.,

W. J. BRYAN.

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*The Belgian Minister to the Secretary of State.*

[Translation—Extracts.]

No. 898.]

BELGIAN LEGATION,  
*Washington, February 13, 1915.*

MR. SECRETARY OF STATE: I am instructed by the King's Government and have the honor to forward herewith to your Excellency a copy of the German Government's reply to the Belgian Government's protest, together with a copy of another note from the Belgian Government which the Spanish Government kindly undertook to deliver at Berlin.

I embrace this opportunity, etc.,

E. HAVENITH.

[Inclosure 1—Translation.]

*The Foreign Office to the Royal Embassy of Spain.*

SPANISH EMBASSY,  
*Berlin, January 3, 1915.*

The Department of Foreign Affairs has the honor to answer the note verbale of the Royal Embassy of Spain of December 31 last as follows:

The Imperial Government is of opinion that the Belgian Govern-

ment's protest in the matter of the exequaturs of consuls in Belgian is groundless.

Article 42 of the IV Convention of The Hague, in particular does not support the views of the Belgian Government. Under that article the occupant Power is bound to maintain, as far as possible, public order in the occupied area; the article in no wise binds it to continue all officials in office. This, on the contrary, could only be done within the measure allowed by the military considerations of occupation and not on the mere condition that those officials will be ready to yield to the authority of the occupant Government. Those principles apply to neutral consuls, and those officers can only discharge their public duties if and as far as the occupant Power agrees, as the enemy's exequatur is not binding on that Power.

The circular note of the Imperial Government concerning consuls does not in any way touch upon the rights of the Belgian Government; it merely deals with the rights of Imperial Government which claims it as its inborn right and undisputable duty to regulate the consular protection of neutral subjects for the term of occupation. This new rule furthermore and foremost is required for the good of the neutral subjects themselves. Inasmuch as 300 representatives at least of the allied or neutral states were recognized in Belgium, most of them of Belgian nationality, many of them having left the country, it is plain that in the interest of the neutral subjects themselves it would not be well for the Imperial Government to delay giving its attention to assured and effective regulations for their protection.

[Inclosure 2—Translation.]

#### NOTE VERBALE.

Germany claimed, in her communication of December 5, that the occupant of an invaded country had the right to regard as "annulled" all exequaturs previously issued to Consuls in office by the lawful power of that country.

The claim is untenable.

By reason of the character of the occupant's power which flows from mere possession and is in no wise final, Article 43 of the IVth Convention of The Hague sanctions, in principle, the continuance of civil and administrative laws and, consequently, of existing conditions.

It is idle for Germany to invoke, in her note of January 3, military



and administrative considerations. These both may justify the withdrawal of the exequatur of a consul who should indulge in hostile acts or behave in a manner inconsistent with the duties of his office. But they can not warrant either a general right of cancellation as claimed by Germany nor her assuming to upset the whole Consular organization to reduce the number of consuls to three for each nation and to bar from consulates, on the sole ground that they are Belgians, men who have committed no act antagonistic to military interests and honestly acknowledged the occupant's rights as defined by The Hague Convention.

The German proposition, if accepted, would carry the consequence of throwing into a state of disastrous uncertainty the Consulates established in parts that are occupied one day and retaken the next.

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*Ambassador Gerard to the Secretary of State.*

No. 664.]

AMERICAN EMBASSY,  
*Berlin, March 12, 1915.*

SIR: With reference to the Department's telegram No. 1044, dated January 21, 4 p. m., the substance of which was duly communicated to the Imperial Foreign Office, I have the honor to transmit to you herewith a copy in translation of the reply of the Foreign Office, dated March 9, 1915, on the subject of the consular representation of the United States in Belgium.

I have, etc.,

JAMES W. GERARD.

[Inclosure—Translation.]

No. I c. 2709/303000

FOREIGN OFFICE,  
*Berlin, March 9, 1915.*

NOTE VERBALE.

The Foreign Office has the honor to convey its best thanks to the Embassy of the United States of America for the statement communicated with the esteemed Note Verbale of January 25, 1915, F. O. No. 2002.

The Foreign Office gladly takes the opportunity expressly to confirm that no objections are raised to the American consular representatives now stationed at Antwerp and Liège. These two officials have succeeded

under the trying conditions of the present time in establishing the most agreeable official relations with the authorities of occupation.

Mr. Watts, the Consul General at Brussels, is on leave of absence, and it would appear that he is not to return to his post. Should the Government of the United States propose to fill this post again, this intention would agree with the wishes of the Imperial Government and the military authorities in Belgium.

Although Ghent is still within the zone of military operations, and official consular activity there would therefore appear not to be desirable as yet, the Foreign Office would like to state at this time that no objections on personal grounds will be raised against Mr. Jansen, the Consul of the United States at that place.

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*Ambassador Penfield to the Secretary of State.*

[Telegram—Paraphrase.]

AMERICAN EMBASSY,  
Vienna, November 13, 1915.

Ambassador Penfield reports that permission has been requested by Vice Consul Young, now at Cacak, Serbia, to return to Belgrade while it is within the military jurisdiction of Austria-Hungary, and a prompt ruling by the Department of State as to whether Vice Consul Young is subordinate to the Embassy at Vienna or the Legation at Bucharest is requested by Ambassador Penfield, who is convinced that intercommunication between an official in inner war zone and a neutral capital would not be permitted by military authorities.

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*Ambassador Penfield to the Secretary of State.*

[Telegram—Extracts.]

AMERICAN EMBASSY,  
Vienna, November 14, 1915.

"This Consulate leaves Cacak Friday for Belgrade. Please wire State Department to instruct me whether I shall join Serbian Government via Italy or remain in Belgrade. YOUNG."

PENFIELD.

*The Secretary of State to Ambassador Penfield.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, November 17, 1915.*

Under existing conditions Young should remain in Belgrade under your supervision. Give him appropriate instructions.

LANSING.

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*Ambassador Penfield to the Secretary of State.*

[Telegram—Paraphrase.]

AMERICAN EMBASSY,  
*Vienna, November 20, 1915.*

Ambassador Penfield reports an informal discussion, of the status of Vice Consul Young at Belgrade, with members of the Ministry of Foreign Affairs of Austria-Hungary who desire to ascertain the preferences of the Department of State. Attention was called to the fact that the functions of Vice Consul Young lapsed *ipso facto* in his inclusion within Austro-Hungarian lines. Some friction with the military authorities was feared should he remain at Belgrade, although no intimation in that sense has been received by the Ministry. However, the Ministry wishes to accede, if possible, to the desires of the Department of State. Precedents of Consuls in Belgium and at Warsaw were cited. It was stated that in view of the care of foreign interests it would be useful to have an American consular officer at Belgrade. Ambassador Penfield promised to ascertain the views of the Department of State, and he suggests that Vice Consul Young might be attached to the American Consulate General at Budapest in order to regulate his status.

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*The Secretary of State to Ambassador Penfield,*

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,  
*Washington, November 23, 1915.*

Mr. Lansing states that while recognizing that, as consuls are not political but commercial representatives, permission for the exercise

of functions by them within defined districts depends upon the authority actually controlling those districts, the Department of State assumed that it would be entirely agreeable to the Government of Austria-Hungary, the military forces of which are in control of Belgrade, to have American Vice Consul Young, who has charge of the Consulate of the United States, remain in Belgrade in charge of American as well as in charge of certain foreign interests in that part of Serbia under the military control of Austria-Hungary, especially since such a course would harmonize with the usual procedure and with the course which was followed concerning consuls in Belgium and in the City of Warsaw. Ambassador Penfield is informed that he may again emphasize the foregoing and indicate that inconvenience to American interests and also to foreign interests in care of the American Consulate would likely result in the withdrawal of the Consulate from Belgrade, and he is directed to express the hope of the United States Government that the American Consulate may be permitted to remain at Belgrade. It is not apparent that objection to Vice Consul Young on personal grounds exists.

It is the belief of the Department of State that the peculiar status of Belgrade makes the placing of the Consulate in the jurisdiction of the Consulate General at Budapest inexpedient and that unless positive reasons for a different course exist it should remain detached under the supervision of the Embassy.

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*Ambassador Penfield to the Secretary of State.*

[Telegram—Paraphrase—Extract.]

AMERICAN EMBASSY,  
Vienna, November 23, 1915.

Following telegram received through Ministry Foreign Affairs for transmission to Department:

Arrived Belgrade with archives and personnel. Request instructions. Military authorities declare impossible remain, Belgrade in war zone. Am leaving for Vienna shortly to confer with Ambassador Penfield.

YOUNG.  
PENFIELD.

*Ambassador Penfield to the Secretary of State.*

[Telegram—Paraphrase.]

AMERICAN EMBASSY,  
*Vienna, December 7, 1915.*

Ambassador Penfield reports the conditions under which the return of Vice Consul Young to Belgrade is consented to by the Government of Austria-Hungary as follows:

First. The employment of only Americans or Austro-Hungarians in the Consulate.

Second. Reports or observations of a military character not to be made.

Third. Subjection of both official and private correspondence to censorship.

Fourth. Journeys in occupied territory not to be undertaken and notification to military authorities in advance of journeys into Austria-Hungary.

Furthermore it is stated verbally by the Ministry of Foreign Affairs that the Vice Consul can not exercise good offices on behalf of Serbians, as they are under military jurisdiction.

It is stated by Vice Consul Young that under present conditions practically no American interests are to be cared for at Belgrade and that Italian, French, and British interests are negligible.

Should the Department, in view of foregoing, consider as useless the definite return of Vice Consul Young to Belgrade, Ambassador Penfield suggests that Mr. Young return to Belgrade to arrange matters and seal the archives, and that the office be left in charge of the messenger, who is an Austro-Hungarian subject exempt from military duty. In the event of Mr. Young being granted indefinite leave of absence it is urged that he be detailed to the Embassy to assist in its work.

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*The Secretary of State to Ambassador Penfield.*

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,  
*Washington, December 23, 1915.*

Secretary Lansing states that as it is apparent there are now practically no American or foreign interests to be taken care of in Belgrade, Vice

Consul Young should make arrangements for the sealing of the archives and for the safeguarding of the Consulate, after which he should go to the American Consulate General at Vienna, to which he has been assigned temporarily subject to the requirements of the Embassy. The seals of the Belgrade Consulate should be deposited in the American Consulate General at Vienna.

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*Vice Consul Young to the Secretary of State.*

No. 74.]

AMERICAN CONSULATE,<sup>1</sup>  
*Belgrade, January 17, 1916.*

SIR: I have the honor to refer to the Department's telegraphic instructions No. 1052 of December 23, 1915, to the American Embassy at Vienna instructing me to return to Belgrade and also instructing as to the temporary closing of the American Consulate at Belgrade.

I also have the honor to report that in pursuance to the Department's instructions I left Vienna on January 4th, the date of the receipt of official permission from the Austro-Hungarian Army Headquarters to return to the war zone, and arrived in Belgrade January 5th, p. m., I having been granted permission to remain in Belgrade five days, such permission having been granted in compliance with the request of the American Embassy, Vienna, "for urgent personal affairs."

Instructions were given the office force of the Consulate that the services of the clerks would not be required by the Consulate after all current business had been finished and brought to date; that one messenger, Tomas Jakobac, Austro-Hungarian subject, was to remain on the premises of the Consulate to look after the office and such furniture and archives as would remain; and that the Consulate was to be temporarily closed.

The cipher code was brought by me to Vienna, and is temporarily deposited against receipt at the American Embassy, Vienna.

The two official Consular seals, the wafer press seal, and the wax seal were also brought by me to Vienna, and have both been deposited at the American Consulate General against proper receipt.

Such archives as could be carried were brought by me with the complete file of correspondence for the year 1915, and such volumes of in-

<sup>1</sup> Written from the American Embassy, Vienna.

structions from the Department as could be carried, and other official records, were also brought to Vienna, and are now in my use here at the American Embassy, in connection with the winding up of current business of the Consulate.

A complete inventory of the Consulate and the exact disposition of each and every article of Government property remaining in the office of the Consulate and also that which has been brought to Vienna will be forwarded by me at the first opportunity.

Those records and archives that remain in the Consulate, with few exceptions, were carefully packed away and locked up and sealed with the official seal of this Consulate and an inventory taken of them. This will be forwarded to the Department.

I left Belgrade January 9th, p. m., 1916, and arrived in Vienna January 10th, p. m., 1916.

I have, etc.,

JAMES B. YOUNG.

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*Ambassador Gerard to the Secretary of State.*

[Telegram—Paraphrase.]

AMERICAN EMBASSY,  
*Berlin, June 14, 1916.*

Mr. Gerard reports that the German Foreign Office states that the Government has in contemplation extending the same recognition to Consul at Warsaw as has been accorded to consuls at Antwerp, Liège, and Brussels. Mr. Gerard states that Foreign Office desires to be informed whether recognition in this form will be regarded as acceptable by the United States Government.

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*The Acting Secretary of State to Ambassador Gerard.*

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,  
*Washington, July 12, 1916.*

Mr. Gerard is directed to inform the German Foreign Office that the

German Government's proposal to grant permission to the American Consul at Warsaw, in accordance with the treatment of consuls in Belgium, to exercise his consular functions in the portion of his consular district under the military occupation of Germany, is acceptable to the United States Government.